



Appeal Decision

Site visit made on 7 June 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2022

Appeal Ref: APP/P1133/C/22/3291106

Beach Farm, Starcross, Exeter, Devon, EX6 8PX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by River Exe Group Ltd against an enforcement notice issued by Teignbridge District Council.
 - The notice, numbered 19/00409/ENF, was issued on 13 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of land hatched blue on the attached plan from agricultural land to a mixed use of agriculture and the storage of boats and associated maritime/industrial equipment in the approximate area hatched blue on the attached plan.
 - The requirements of the notice are to:
 - (a) Cease using the land highlighted in red on the attached plan for the unauthorised storage of boats and associated maritime/industrial equipment/items, and
 - (b) Remove all boats and associated equipment/items from the land hatched blue on the attached plan.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (e), (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to the correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. One of the appellant's grounds of appeal (ground (e)) is that the notice was not served properly on everyone with an interest in the land subject to the notice. The appellant states that the red line on the enforcement notice plan incorporates part of the neighbouring property's land, including a conservatory and garden, and the notice has not been served on the property. The area in question is shown on the appellant's figure 12 in the appeal statement.
3. The Council indicates that the enforcement plan was based on an official Land Registry plan showing the extent of the land in the appellant's ownership but it is accepted that the red line could be amended should I consider it to be necessary. On the basis of my site inspection, and my assessment of the relevant site, I am satisfied that the plan should be corrected to exclude the neighbour's land.

4. The Council does point out that there is a discrepancy on the enforcement plan as it shows a narrow strip of land on the eastern boundary of the appellant's land which is a drainage ditch. The Council has requested that I substitute the plan at Appendix 10 of their statement for the plan attached to the enforcement notice. Although the appellant has not responded on this issue, I am satisfied that there would be no injustice arising by correcting the notice.
5. I have the power under s173 (3)-(7) to correct the plan in respect the area identified, so long as any amendment would not cause injustice to the parties, which I am satisfied is the case.
6. I therefore intend to correct the notice by substituting the plan attached to this decision for the plan attached to the enforcement notice to exclude the neighbour's land and the drainage ditch. This will satisfy Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals)(England), Regulations 2002 which indicate under criterion (c) that the notice should specify 'the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.'
7. Grounds (b), (c) and (e) relate to legal matters where the burden of proof rests with the appellant and the standard of proof is on the grounds of probability.

The site and relevant planning history

8. The appeal site is at Beach Farm which contains a large-detached dwelling in a prominent position fronting onto the A379 Dawlish-Exeter Road within an Area of Great Landscape Value. Land within the appeal site and to the east of the dwelling is in use for the storage of boats, pontoons and a variety of associated maritime and industrial type equipment. A cycle path and the main West Coast railway line run close to and parallel with the main road with the estuary of the River Exe beyond. The site lies between the settlement of Starcross and a golf course.
9. A Lawful Development Certificate (LDC) was issued in 2021 to demolish a single storey bathroom and replace it with a single storey extension (21/00273/CLDP).

The appeal on ground (e)

10. An appeal on this ground is that the notice was not served properly on everyone with an interest in the land. As I have corrected the plan attached to the notice, I am satisfied that all those with an interest in the land have been properly served. The appeal on this ground fails.

The appeal on ground (b)

11. Appeals on these ground are that a breach of control has not occurred as a matter of fact. The appellant accepts that three commercial boats which were part of the River café business were stored on the land in association with the business but these boats are now back in the water. The entire collection of boats and related equipment are for the appellant's personal use. Notwithstanding the position now, the question is whether the breach had occurred by the date of issue of the notice. If the alleged activities had been on the site, an appeal on ground (b) cannot succeed simply on the basis that the activities have ceased. The last use of the site will have been the unauthorised use and breach will have occurred as a matter of fact.
12. The appeal on this ground fails.

The appeal on ground (c)

13. The appellant states that the alleged breach has taken place on land in residential use, is incidental to it, is not in agricultural use, and that the appellant has not used the land for any of the purposes set out in s336. The appellant considers the land as the front garden to the house which is not separated by a wall or hedge.
14. In support of this position, the appellant refers to the red line plan attached to the 2021 LDC application which encloses the whole appeal site. It is stated that had the Council considered that part of the site was agricultural, then the Council should have requested that the plan be amended to show part of the site to be edged in blue. I do not regard this as evidence that the appeal site was either in residential use or within the curtilage of a dwellinghouse as the certificate refers only to the lawfulness of the demolition of a single storey former bathroom and its replacement with a single storey extension.
15. The Council does not consider that the land forms part of the residential curtilage having regard to the probability that it was part of a larger area of agricultural land that surrounded the property when it was a vicarage and also given the garden area to the west of a large stone wall next to the main house. A series of aerial images from 2005/06 to 2019 in appendix 8 of the Council's statement show the land to the east of the house to be grassed with no indication of any cultivation as a garden, other than closest to the dwelling. There is no evidence of a residential use of the land other than the presence of a double garage and storage building, and driveways from the road to the dwelling. An unfenced driveway through a field may serve a dwelling but this does not indicate that it forms part of a residential curtilage. The Council's Appendix 3 distinguishes between the residential curtilage of the appeal site and the agricultural/non-residential curtilage and I have no reason to accept that their assessment of the situation is incorrect.
16. The term 'curtilage' should not be confused with the planning unit. The two will sometimes cover the same area on the ground, but that will not always be the case and does not in any event mean that they are the same thing. Additionally, curtilage should also never be confused with a use of land.
17. In defining the extent of the curtilage of the dwellinghouse I have had regard to the usual three tests of physical layout, ownership (past and present) and the use or function (past and present) applied to the land. I have also had regard to the case cited by the appellant (*Burford v SoSCLG* [2017] EWHC 1493 (Admin)). As a matter of fact and degree, I find that most of the area of land to the east of the dwelling not to form part of the curtilage of the dwellinghouse due to its size, its lack of any intimate association with the dwelling and absence of any indication of use that could reasonably be regarded as being ancillary to use of the land as a dwellinghouse.
18. Even had the evidence shown on the balance of probabilities that the field to the east of the dwelling had a lawful residential use, this does not mean that it automatically forms part of the curtilage of a dwellinghouse. Permitted development rights under Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended only apply to the curtilage of a dwellinghouse and not the whole residential planning unit, if that is larger, or indeed to other land in residential use.

19. Additionally, the number of boats and other craft on the site; the miscellaneous assortment of marine and other equipment, including winches, trailers, tyres, wheels, generators and a hoist/lifting mechanism; a large number of pontoon components and a considerable stack of chairs, did not appear to me to be in any way incidental to the use of a dwelling house but appeared as a marine scrapyard.
20. Accordingly I conclude that the evidence is insufficiently clear and unambiguous to support the claim that the whole of the appeal site is within the curtilage of the dwelling. I consider on the balance of probability that the part of the site to the east of the dwelling including the land hatched blue on the plan attached to the notice does not fall within the curtilage of the dwelling. The use of the site for the matters alleged in the notice constitutes development for which planning permission is required.
21. The appeal on this grounds fail.

The appeal on ground (a)

22. An appeal on this ground is that is that planning permission should be granted for what is alleged in the notice.
23. The main issue in the ground (a) appeal is the affect that the development has on the character and appearance of the area.
24. Landscape Policy EN2A of the adopted Teignbridge Local Plan 2013-2033 aims to protect and enhance the character and appearance of the landscape and seascape and, in particular, in Areas of Great Landscape Value where the qualities, character and distinctiveness of the locality are to be conserved and enhanced as well as minimising adverse visual impacts.
25. The sensitivity, openness and prominence of the site is compromised by the open storage of boats and maritime and other paraphernalia which has a significant and adverse visual affect from a number of public viewpoints close to the site at the entry point to Starcross, including views from the road, cycle path and the railway line. This fails to protect and enhance the distinctive character of the area which arises from a unique combination of and inter-connectivity between the sea and the land. This is apparent from my site inspection and from the photographs submitted by the parties. Whilst boats and maritime activities are very much part of the character of the area, it does not follow that sites that make a distinct contribution should be given up for the storage of boats and other paraphernalia.
26. I attach little weight to the appellant's reference to signage on the adjoining golf course being more intrusive than recreational boats, which I take to be a reference to the storage of boats etc on the appeal site
27. The appellant refers to the National Planning Policy Framework and in particular paragraphs 80 and 84 but the appellant does not make it clear how these policies regarding the rural economy outweigh the adverse effects the development has on the character and appearance of a distinctive coastal area.
28. I conclude that the unauthorised development adversely affects the character and appearance of the area as it does not accord with the policies in the adopted local plan including Policy EN2A referred to above, or with Policies S1, S1A and S2 in respect of sustainable and quality development.

29. The appellant has submitted a number of conditions to limit the use of the site to the storage of boats only; that they shall be stored at ground level only and have their masts stored horizontally; restricted hours of movement; and no external floodlighting. Notwithstanding the minor mitigation that these conditions could have on the adverse effects of the development, they would not overcome the harm caused to make the development acceptable.
30. The appeal on this ground fails.

The appeal on ground (f)

31. An appeal on this ground is that the steps are excessive and lesser steps would overcome the objection.
32. The appellant points out that the area edged red on the plan attached to the notice exceeds the area relating to the land subject to the breach, which the Council states has occurred in the area edged blue. The appellant considers the blue area to be excessive and that the requirements would prevent the storage of any boats and maritime equipment for the appellant's own use within the entire curtilage.
33. The Council points out that the extent of the site storage varied between site visits and the blue area shows the approximate location where the planning breach has occurred.
34. The requirements refer to ceasing the *unauthorised* (my emphasis) storage of boats, etc on the red land and the removal of boats, etc from the blue hatched land. I do not consider there to be anything excessive with these requirements.
35. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
36. The requirements do not preclude the appellant doing what he is lawfully entitled to do in the future once the notice has been complied with, which would include uses incidental to the use of the dwellinghouse within its curtilage.
37. The appeal on this ground fails

Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

P N Jarratt

INSPECTOR

A corrected plan is attached to this decision letter on the following page.

Plan

This is the corrected plan referred to in the Decision Letter and replaces the plan attached to the enforcement notice.

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Scale: Not to Scale

